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SNELL & WILMER ONE ARIZONA CENTER 400 EAST VAN BUREN PHOENIX, AZ 850040001			WALSH, DANIEL I	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/708,822

Applicant(s)

BEENAU ET AL.

Examiner

Daniel I. Walsh

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3-04, 4-04, 8-04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

### DETAILED ACTION

1. Receipt is acknowledged of the IDS received on 20 August 2004, 9 April 2004, and 26 March 2004.

#### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 4, 8, 10, and 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 6, 7, and 9 of copending Application No. 10708823, claims 1-4, 8, and 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, and 7-8 of copending Application No. 10708824, claims 1-8 and 10-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4-7, and 11-21 of copending Application No. 10708825, 10708826, 10708828, 10708830, 10708831, 10708832, and 10708834, claims 1-8 and 10-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting

as being unpatentable over claims 1-7, and 12-22 copending Application No. 10708827, 10708833, 10708835, 10708836, claims 1-8 and 10-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, and 13-23 of copending Application No. 10708829, claims 1-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of copending Application Nos. 10708837.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claimed invention is a broader recitation of the previously listed Applications.

For instance in claims 1-8 and 10-19 of the present claimed invention and claims 1-7 and 12-22 of the of the '827 Patent Application, the Applicants claim:

i) "...transponder reader transaction system...transponder...reader...biometric sensor...a device configured to verify the proffered biometric sample to facilitate a transaction. (see claim 1), whereas in the '827 Patent Applicant the Applicants claim "...transponder reader transaction system...transponder...reader...voice print sensor...a device configured to verify the proffered biometric sample to facilitate a transaction." (see claim 1). The Examiner notes that a voice print sensor is merely a specific type of biometric sensor, known in the art.

For instance in claim 2 of the present claimed invention and claim 2 of the '827 Patent Application, the Applicants claim:

ii) "...sensor is configured to communicate with said system via at least one of a transponder, a reader, and a network. (see claim 2), whereas in the '8278 Patent Application the

Applicants claim "...sensor is configured to communicate with said system via at least one of a transponder, a reader, and a network. (see claim 2).

For instance in claim 3 of the present claimed invention and claim 3 of the '827 Patent Application, the Applicants claim:

iii) "...facilitate a finite number of scans." (see claim 3), whereas in the '827 Patent Application the Applicants claim "...facilitate a finite number of scans." (see claim 3).

For instance in claim 4 of the present claimed invention and claim 4 of the '827 Patent Application, the Applicants claim:

iv) "...detected biometric sample, processed biometric sample, and stored biometric sample." (see claim 4), whereas in the '827 Patent Application the Applicants claim "...detected biometric sample, processed biometric sample, and stored biometric sample." (see claim 4).

For instance in claim 5 of the present claimed invention and claim 5 of the '827 Patent Application, the Applicants claim:

v) "...database configured to store a data packet...terrorist information and criminal information." (see claim 5), whereas in the '827 Patent Application the Applicants claim "...database configured to store at least one data packet...terrorist information and criminal information." (see claim 5).

For instance in claim 6 of the present claimed invention and claim 6 of the '827 Patent Application, the Applicants claim:

vi) "...remote server, merchant server, and transponder reader system" (see claim 6), whereas in the '827 Patent Application the Applicants claim "...remote server, merchant server, and transponder reader system" (see claim 6).

For instance in claim 7 of the present claimed invention and claim 7 of the '827 Patent Application, the Applicants claim:

vii) "...authorized sample receiver." (see claim 7), whereas in the '827 Patent Application the Applicants claim "...authorized sample receiver." (see claim 7).

For instance in claim 8 of the present claimed invention and claim 12 of the '827 Patent Application, the Applicants claim:

viii) "...compare a proffered biometric sample with stored biometric sample." (see claim 8), whereas in the '827 Patent Application the Applicants claim "...compare a proffered voice print sample with a stored voice print sample." (see claim 12).

For instance in claim 10 of the present claimed invention and claim 13 of the '827 Patent Application, the Applicants claim:

ix) "...third-party security vendor device and protocol/sequence controller." (see claim 10), whereas in the '827 Patent Application the Applicants claim "...third-party security vendor device and protocol/sequence controller." (see claim 13).

For instance in claim 11 of the present claimed invention and claim 14 of the '827 Patent Application, the Applicants claim:

x) "...registered biometric sample..." (see claim 11), whereas in the '827 Patent Application the Applicants claim "...registered biometric sample." (see claim 14).

For instance in claim 12 of the present claimed invention and claim 15 of the '827 Patent Application, the Applicants claim:

xi) "...personal information, credit card information, debit card information, savings account information, and loyalty point information." (see claim 12), whereas in the '827 Patent Application the Applicants claim "...personal information, credit card information, debit card information, savings account information, and loyalty point information." (see claim 15).

For instance in claim 13 of the present claimed invention and claim 16 of the '827 Patent Application, the Applicants claim:

xii) "...different one of: personal information, credit card information, debit card information, savings account information, and loyalty point information." (see claim 13), whereas in the '827 Patent Application the Applicants claim "...different one of: personal information, credit card information, debit card information, savings account information, and loyalty point information." (see claim 16).

For instance in claim 14 of the present claimed invention and claim 17 of the '827 Patent Application, the Applicants claim:

xiii) "...where second user information is different than first user information." (see claim 14), whereas in the '827 Patent Application the Applicants claim "...where second user information is different than first user information." (see claim 17).

For instance in claim 15 of the present claimed invention and claim 18 of the '827 Patent Application, the Applicants claim:

xiv) "...mutual authentication..." (see claim 15), whereas in the '827 Patent Application the Applicants claim "...mutual authentication." (see claim 18)

For instance in claim 16 of the present claimed invention and claim 19 of the '827 Patent Application, the Applicants claim:

xv) "...deactivate upon rejection of the proffered biometric sample." (see claim 16), whereas in the '827 Patent Application the Applicants claim "...deactivate upon rejection of said proffered voice print sample." (see claim 19).

For instance in claim 17 of the present claimed invention and claim 20 of the '827 Patent Application, the Applicants claim:

xvi) "...notification upon detection of a sample." (see claim 17), whereas in the '827 Patent Application the Applicants claim "...notification upon detection of a sample." (see claim 20).



For instance in claim 18 of the present claimed invention and claim 21 of the '827 Patent Application, the Applicants claim:

xvii) "...access, activation of a device, a financial transaction.... (see claim 18), whereas in the '827 Patent Application the Applicants claim "...access, activation of a device, a financial transaction.... (see claim 21).

For instance in claim 19 of the present claimed invention and claim 22 of the '827 Patent Application, the Applicants claim:

xviii) "...secondary security procedure." (see claim 19), whereas in the '827 Patent Application the Applicants claim "...secondary security procedure." (see claim 22).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

In regards to the other listed applications above, the Examiner notes that a similar analysis applies to the claims of those applications, as the current invention is merely a broader recitation of the above listed applications, where the types of biometric data provided in the above mentioned applications are all well known and conventional in the art for verifying a person, as they are merely well known types of biometric data, conventional in the art.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-11 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haala (US 2005/0005172) in view of Chan et al. (US 6,588,673).

Re claim 1, Haala teaches a transponder (10) configured to communicate with a reader (18) that communicates with the system (FIG. 1), a biometric sensor configured to detect a proffered biometric sample (20, 22, 24, etc.), the biometric sensor configured to communicate with the system and a device configured to verify the proffered biometric sample to facilitate a transaction (paragraph [0038]+ and FIG. 1).

Haala is silent to a transponder.

Though Haala is silent to a transponder, the Examiner notes that it is well known and conventional for smart cards/contactless IC cards to communicate wirelessly through an antenna

(Radio Waves). Accordingly, Chan et al. teaches that contactless smart transaction cards (col 1, lines 55+) transmit information contactlessly through radio waves (transponder).

Accordingly, it would have been obvious to combine the teachings of Haala with those of Chan et al in order to have a radio frequency transaction device/card/transponder that is capable of contactless communication over an extended range, for convenience of the customer.

The Examiner also notes there are other numerous references teachings smart/IC cards that communicate over radio waves (transponders). It is an obvious expedient to have a transponder facilitate/initiate transactions for user convenience/contactless, over a desired range.

Re claim 2, Haala teaches that the sensor is configured to communicate with the system via at least one of a transponder, reader, and network (FIG. 1).

Re claim 3, it is clear that the sensor of the system of Haala facilitates a finite number of scans (only one scan is required).

Re claim 4, Haala is silent to the sensor logging at least one of a detected biometric sample, processed biometric sample, and stored biometric sample. However, the Examiner notes that it is obvious that in order to communicate data from the sensor to the remote system, that the biometric data must be logged/stored, at least on a temporary basis. Additionally, the Examiner notes that Haala teaches that the details associated with a failed transaction attempt (due to failure to authorize the individual) are stored (paragraph [0041]). Accordingly, it is obvious that the information obtained by the sensor would be stored as part of the transaction information, to assist in determining/locating those individuals.

Re claim 5, Haala is silent to a database storing a data packet including at least one of proffered and registered biometric samples, proffered and registered user information, terrorist

information, and criminal information. However, Haala teaches that such information is collected and stored at remote computer 14 (paragraph [0035]+). Accordingly, it would have been an obvious expedient to record such information in a database, so as to easily verify and compare information.

Re claim 6, it has been discussed above that the information is stored on a remote computer. Though Haala is silent to the remote computer being a remote server, the Examiner notes that since the remote computer is coupled to a transaction terminal/device, it would have been obvious that the computer be a server, in order to be able to communicate over a network/internet, as disclosed, and provide the computer power for such a system.

Re claim 7, as the remote computer 14 has been discussed above as part of a national security effort, and as the remote computer stores personal and biometric information submitted by a individual, it is interpreted to be operated by an authorized sample receiver.

Re claim 8, it has been discussed above that the system includes a device that compares a proffered sample to a stored sample, for verification.

Re claim 9, Haala teaches that retinal scanners, finger print readers, hand print scanners, voice print processors, pressure sensitive regions (FIG. 1). Accordingly, as it includes at least a finger print reader, a characteristic of the biometric sample (print) is compared. Further, it is obvious that such devices would include comparing at least one characteristic of minutia, vascular patterns, prints, waveforms, odorants, nodal points, reference points, size, shape, thermal patterns, blood flow, and body heat, as such characteristics are well known and conventional in the art for comparing/verifying biometric data (see US 6,636,620, US 2003/0223625, US 2001/0036301, and US 6,233,348, etc.)

Re claim 10, as the device is used to control sequences/processes, it is interpreted as a protocol/sequence controller.

Re claim 11, the Examiner interprets a stored biometric sample as one that is registered (in remote computer 14).

Re claim 17, though Haala is silent to a notification being provided upon detection of a sample, the Examiner notes that it is obvious that once a sample is detected and it is compared for verification, that the act of providing the detected sample for comparison, it interpreted as providing a notification. The Examiner also notes that it is well known and conventional in the art to provide a notification to a user, such as a audible tone, or visual display, at a transaction device, input device, etc. to confirm to the user that their input has been accepted. Accordingly, that type of notification (to a user) is an obvious expedient.

Re claim 18, Haala teaches the device facilitates one of access, activation of a device, a financial transaction, and a non-financial transaction (FIG. 5).

Re claim 19, Haala teaches a secondary security procedure to verify a sample (FIG. 3), as personal information is input as well as biometric information.

4. Claims 1, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martizen et al. (US 2002/0191816) in view of Chan et al..

Re claim 1, Martizen et al. teaches a transponder 105 configured to communicate with a reader configured to communicate with the system (FIG. 1), a biometric sensor (within PTD 170) configured to detect a proffered biometric sample, the sensor communicates with the system (FIG. 1) and a device (matching module 665) configured to verify the proffered biometric sample to facilitate a transaction. Though Martizen et al. is silent to a transponder, the Examiner

notes that it has been discussed above that such RF devices are well known and conventional in the art, and are an obvious expedient for a well known and predictable contactless interface/means for communication.

The teachings of Chan et al. have been discussed above.

At the time the invention was made, it would have been obvious to combine the teachings of Martizen et al. with those of Chan et al. in order to have a contactless means of communication, that is well known and conventional in the art (radio), and therefore is an obvious expedient with predicted results (longer range, contactless, etc.).

Re claim 12, Martizen et al. teaches a registered biometric sample is associated with at least one of personal information, credit card information, debit card information, savings account information, and loyalty point information (FIG. 6A).

Re claim 13, Martizen et al. teaches different registered biometric samples are associated with a different one of personal information, credit card information, debit card information, savings account information, and loyalty point information (FIG. 6A).

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martizen et al. in view of Moebs et al. (US 2005/0065872).

Re claim 14, Martizen et al. teaches a biometric sample is associated with at least one of first user information, wherein the first information comprises personal information, credit card information, debit card information, savings account information, and loyalty point information, and wherein a biometric sample is associated with at least one of second user information, wherein the second information comprises personal information, credit card information, debit card information, savings account information, and loyalty point information, where the second

user information is different than the first user information, but Martizen et al. is silent to the biometric sample being primarily and secondarily associated with different information, as Martizen et al. teaches separate biometric samples.

Moebs et al. teaches that a customer can avoid overdrafts by preauthorizing the financial institution to tie the customer's checking account to one or more of the customers other accounts such as deposit accounts (paragraph [0017]). The Examiner notes that overdraft protection is well known and conventional in the art. Accordingly, the Examiner notes it would have been obvious that by linking an overdraft account to a primary account that is associated with the sample, that the overdraft account is interpreted as being secondarily associated with the sample, for if the primary account is overdrawn, the secondary account is drawn upon.

Accordingly, it would have been obvious to combine the teachings of Martizen et al. with those of Moebs et al. in order to have overdraft protection, for example.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haala, in view of Goodman et al. (US 2002/0043566).

The teachings of Martizen et al. have been discussed above. It is obvious that if biometrics don't match, that a transaction is not authorized, as is conventional in the art (also see Hoshino US 6,636,620).

The Examiner additionally notes that it is well known and conventional that security measures are common on transaction cards, such as disabling a card (as a security measure) if a predetermined amount of attempts to enter a password/code/identifier are detected. Specifically, Goodman et al. teaches deactivation of a card if a predetermined amount of incorrect PIN attempts are detected (paragraph [0029]).

At the time the invention was made, it would have been obvious to an artisan of ordinary skill in the art to combine the teachings of Haala with Goodman.

One would have been motivated to do this to increase the security of the system by disabling a card after a number of incorrect inputs.

Though Goodman is silent to a biometric input, the Examiner notes that Goodman supplies a teaching for disabling a card when a matching input is not received. As Haala and Hoshino teach not allowing a transaction, and even teach contacting authorities, when a input is not matched, it would have been obvious to use the teachings of Goodman to expand the security and to disable the card so that unauthorized used does not occur, when biometric inputs do not match.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haala in view of Teicher et al. (US 6,257,486).

The teachings of Haala have been discussed above.

Haala is silent to mutual verification.

The Examiner notes that mutual verification is well known in the art for security. Teicher et al. teaches mutual authentication occurring between a card and a terminal device after a PIN is input (col 7, lines 35+) whereby both the card and the reader itself are verified.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Haala with those Teicher et al.

One would have been motivated to do this to provide enhanced security.

Though Teicher et al. teaches a PIN and not a biometric input, the Examiner notes that a biometric input is an additional type of security for the user, similar to a PIN. Accordingly, it



would have been obvious to provide mutual authentication when a biometric is input, to effect the same desired result, enhanced security for a transaction, as a PIN and biometric input are both security features to protect an individual (also see <http://disc.cba.uh.edu/~rhirsch/fall96/lara.htm> for general teaching of mutual authentication between a card and reader).

### ***Conclusion***

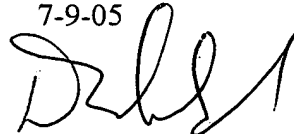
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Hoshino (US 6,636,620) and Black (US 2005/0122209), which teaches the facilitating transactions with a biometric card, Hillhouse et al. (US 2003/0223625), Kim (US 2002/0087869), Yamaguchi et al. (US 2001/0036301), Fuji et al. (US 6,233,348), Bogosian, Jr. (US re36580), Doughty et al. (US 2005/0001711), Ezaki et al. (US 2003/0037264), Hewel (US 2005/0103839), Berardi et al. (US 2004/0118930), Roberts et al. (US 5,438,184), Nestor et al. (US 2004/0006497), Deaton (US 2002/0179704), Loof (US 2002/0186133), Saltz (US 2005/0149926), Royer et al. (US 2004/0155101), Janke (US 2004/0083380), Antonucci (US 2003/0236704), D'Arbeloff et al. (US 2003/0009382), Garcia (US 2003/0125054), Geiselman et al. (US 2002/0072349), Schick et al. (US 5,180,902), Yu et al. (US 2005/0097038), and Smart Card Technology and Applications (<http://disc.cba.uh.edu/~rhirsch/fall96/lara.htm>).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Walsh whose telephone number is (571) 272-2409. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel I Walsh  
Examiner  
Art Unit 2876  
7-9-05

  
Daniel Walsh